

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to City public works, providing findings regarding Priority hire; establishing a policy to promote training and career opportunities for individuals in the construction trades; establishing priorities for the hiring of Residents in Economically Distressed Areas with particular priority for Seattle and King County; directing the Department of Finance and Administrative Services to execute a Project Labor Agreement for public works projects; directing that the program be evaluated and reported on annually; adding a new Chapter 20.37 to the Seattle Municipal Code, which includes Sections 20.37.010, 20.37.020, 20.37.030, 20.37.040, 20.37.050, 20.37.060, 20.37.070, 20.37.080, and amending Seattle Municipal Code Sections 20.38.005 and 20.38.010 in connection thereto.

WHEREAS, the City Council and the Mayor seek to enhance the skilled construction labor force for City public works, utilizing a Project Labor Agreement (PLA) and strategies to recruit individuals who are underrepresented in the construction trades into training and job placements, especially those individuals residing in Economically Distressed Areas of Seattle and King County; and

WHEREAS, on September 23, 2013, the Council adopted joint Resolution 31485, which established a Construction Careers Advisory Committee (CCAC) and asked CCAC members to recommend to the Mayor and City Council policies, programs and resources to increase career opportunities for underrepresented workers on public works projects funded by the City of Seattle; and

WHEREAS, the City commissioned professional studies and analyses to guide the CCAC and the City, including the *Construction Industry Labor Market Assessment*, Community Attributes Inc., March 2014; *Worker Profile in City of Seattle Construction Projects*, UCLA Labor Center, February 2014; and *Exploring Targeted Hire: An Assessment of Best Practices in the Construction Industry*, UCLA Labor Center, March 2014; and

WHEREAS, the CCAC delivered its report to the Mayor and City Council on July 30, 2014, and recommended the City adopt an ordinance to require a PLA for all projects at or above a construction budget of \$5 million; and

WHEREAS, the CCAC recommended that the PLA would also provide accommodations for Open-Shop Contractors, include resources for training programs, and require higher rates for hiring Pre-apprentice and Apprentice workers while mandating the hiring of

Residents in Economically Distressed Areas, particularly in Seattle and King County, and encouraging aspirational goals for the hiring of women and racial minorities; and

WHEREAS, the Mayor and City Council considered the CCAC's recommendations, other jurisdictions' experiences, the City's experience under the Alaskan Way Seawall Replacement Project Community Workforce Agreement that was executed on September 12, 2013, and input from Contractors, labor union representatives, community advocates, Women and Minority Businesses, training providers and policy experts; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1.

Findings

A. Based on studies commissioned by the City of Seattle, recommendations of the Construction Careers Advisory Committee, and numerous public discussions, the Mayor and City Council find that it is in the City's and public's best interest to increase the supply of qualified construction workers, particularly those underrepresented in the construction industry, including women, racial minorities, and those who live in Economically Distressed Areas of Seattle and King County.

1. Underrepresented Workers. The City has a commitment to ensuring equity in the public works workforce for underrepresented workers where disparities exist between their availability to work and their opportunity to be hired and establish a career in the construction trades.

a. Chapter 20.42 of the Seattle Municipal Code requires Contractors to show evidence of good faith efforts to hire underrepresented workers on public works projects, and authorizes the Director of Finance and Administrative Services to assist Contractors in such efforts.

b. The City commissioned the *Construction Industry Labor Market Assessment*, which found that absent a City's investment in Pre-apprentice and Apprentice Training Programs, women, irrespective of race, are underrepresented in the construction industry, and are 10 percent less likely to finish an Apprentice Training Program as compared to males (p.35).

c. The *Construction Industry Labor Market Assessment* also found that racial minorities are 12 percent less likely to finish an Apprentice Training Program as compared to white participants (p.36).

d. The *Construction Industry Labor Market Assessment* also found that underrepresented workers face barriers to completing apprentice training. Between 2009 and 2013, 65 percent of racial minorities leaving apprenticeships did not complete Apprentice Training Programs. Fifty-one percent of all white participants failed to complete the program. Sixty-five percent of all women, irrespective of race, failed to complete the programs compared to 56 percent of all men (p.35-36).

2. Economically Distressed Areas. The City finds that Seattle has areas of economic distress based on poverty indicators, including poverty levels, concentrated unemployment, and gaps in educational attainment. The City also finds that areas in King County, outside of the City, have similar areas of economic distress that affect workforce availability and Seattle's neighboring communities in the County. The City seeks to act effectively and expeditiously to encourage solutions toward economic growth and job

1 creation in areas of the City that are Economically Distressed by comparatively high
2 levels of poverty, unemployment rates and education attainment.

3
4 a. The City finds, through expert studies, that certain zip codes in Seattle and
5 King County suffer from high levels of poverty, unemployment, and low-
6 educational attainment rates that require measures to encourage economic growth
7 and job creation and/or job retention for those areas.

8
9 b. According to American Community Survey data, the County's average
10 unemployment rate in 2012 was 6.7 percent; however, the unemployment rate
11 was greater for certain portions of the County's population: Latinos were at 8.4
12 percent, head-of-household women were at 7.6 percent; and African-Americans
13 were at 12.9 percent.

14
15 3. Project Labor Agreement – Labor Harmony. The City finds that a Project Labor
16 Agreement ("PLA") is an effective tool to manage public works projects, reduce risk of
17 project delays, reduce schedule interruptions, and reduce labor disruptions and labor
18 shortages. A PLA is also an effective tool to improve job-site safety and overall working
19 conditions.

20
21 a. The *Exploring Targeted Hire: An Assessment of Best Practices in the*
22 *Construction Industry* study reports that PLAs are an effective tool to increase
23 access to qualified labor, assure labor harmony and ensure Priority Workers are
24 employed and provided equitable treatment on projects (p.24).

1 b. In September 2012, the City executed a PLA entitled the “Alaskan Way
2 Seawall Replacement Project Community Workforce Agreement,” that had
3 aspirational goals and successful outcomes to promote employment opportunities
4 on public works project for women, racial minorities and those from
5 Economically Distressed Areas. The City’s experience under the Alaskan Way
6 Seawall Replacement Project Community Workforce Agreement indicates that
7 the CWA provides a clear dispute resolution process to achieve labor harmony.
8

9 c. The City’s experience with the Alaskan Way Seawall Replacement Project
10 Community Workforce Agreement offers evidence that PLAs are consistent with
11 statutory, competitive procurement requirements, and allows Open-Shop
12 Contractors to successfully bid, compete and win contract awards. City data
13 shows that as of August 22, 2014, the percentage of Open-Shop subcontracts is
14 68.2 percent in the Alaskan Way Seawall Replacement Project whereas traditional
15 city roadway projects have a lesser rate of 64.2 percent Open-Shop subcontracts.
16

17 d. The City has a commitment to providing education, training and technical
18 assistance to Contractors unfamiliar with a union environment and those
19 unaffiliated with a labor union (“Open-Shop”).
20

21 e. The City’s experience with the Alaskan Way Seawall Replacement Project
22 Community Workforce Agreement also provides evidence that PLAs are
23 consistent with the utilization of Women and Minority Businesses; the project has
24 expended 23 percent of total dollars with Women and Minority Businesses as of
25 July 31, 2014 as compared to the typical 12 percent the City has historically
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1 experienced on roadway projects when considering all such projects within the
2 past three calendar years.

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4 4. Labor Shortages. The City commissioned the *Construction Industry Labor Market*
5 *Assessment*, which found that the City may reasonably anticipate labor shortages in
6 certain construction trades by 2019 (p.ii). The City is concerned that these labor shortages
7 may increase construction costs on the City's public works projects unless the City
8 supports efforts to increase the supply of trained Apprentices and Journey-level workers
9 for local public works projects. Other pertinent findings from this study that support the
10 City's need to minimize the risk of anticipated labor shortages are as follows:

11
12 a. The demand for construction trade workers is calculated to increase through
13 2019, leaving only a 5.8 percent marginal surplus of workers by 2019, such that
14 the City may expect worker shortages in certain construction trades needed to
15 execute the City's public works projects (p.ii).

16
17 b. Workers likely to respond to new training and employment opportunities are
18 those who (i) live in a local region that promotes new training and employment
19 opportunities, (ii) can travel to a jobsite located in the local region a worker lives
20 in without significant advance notice and (iii) are unemployed or living in
21 poverty.

22
23 c. The Washington Legislature has found, in RCW 39.04.300, that a trained and
24 qualified workforce is critical to accomplish public works and that qualified
25 Apprentice Training Programs are essential to, and effective for, assuring an
26 adequate supply of trained workers. RCW 39.04.320 (1)(a) provides that for all
27

1 public works estimated to cost \$1 million or more, the contract specification shall
2 require that no less than 15 percent of Labor Hours be performed by an
3 Apprentice, absent statutory exceptions or adjustments for specific projects for
4 specific reasons. Under Seattle Municipal Code Chapter 20.38 titled
5 “Apprenticeship Program,” the Department of Finance and Administrative
6 Services and its Director are responsible for implementation of these requirements
7 on City of Seattle public works contracts.

8
9 d. The *Exploring Targeted Hire: An Assessment of Best Practices in the*
10 *Construction Industry* found that policies are effective for recruiting those
11 individuals that are available, but not fully represented in the construction labor
12 supply in Milwaukee, Cleveland, the City of Los Angeles, San Francisco and
13 other jurisdictions (p.27, p.32).

14
15 5. Environmental Benefits. The City has a commitment to reduce environmental impacts
16 by promoting environmentally sustainable practices that reduce commuting distances,
17 lower transportation costs, reduce demands on the City’s transportation infrastructure,
18 reduce roadway degradation, lower greenhouse gas emissions and brake dust emissions,
19 thereby fulfilling the goals of Council Resolution 31447 that adopted the Seattle Climate
20 Action Plan in June 2013.

21
22 a. City public works projects employ construction workers living throughout the
23 tri-county region who travel to construction job sites located within the City and
24 King County. Among the construction trade workers employed on City public
25 work projects, 69 percent of the workforce travel into King County from other
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regions (*Worker Profile in City of Seattle Construction Projects p.ii*), resulting in negative impact to the environment.

b. City data indicates the City could reduce more than 80,000 miles driven by prioritizing those residing closer to City public works job sites.

Section 2. A new Chapter 20.37 “Priority Hire” is added to the Seattle Municipal Code as follows:

Chapter 20.37 – PRIORITY HIRE

Section 3. A new Section 20.37.010 of the Seattle Municipal Code is added as follows.

20.37.010 Definitions

When used in this Chapter, the following words and phrases shall have the meanings given below unless the context in which they are included clearly indicates otherwise:

A. Apprentice: Any worker enrolled in an Apprentice Training Program.

B. Apprentice Training Program: A program registered and in compliance with the Washington State Apprenticeship and Training Council as defined by RCW 49.04 and WAC 296-05-011 and WAC 296-05-013.

C. City: City of Seattle.

1 D. Contractor: Any person, firm, partnership, owner operator, limited liability company,
2 corporation, joint venture, proprietorship, trust, association or another legal entity that contracts
3 with the City or serves as a subcontractor on a City public works project including both union
4 and non-union entities.

5
6 E. Core Employee: An employee of an Open-Shop Contractor that meets the Core Employee
7 criteria established by the PLA.

8
9 F. Department: Department of Finance and Administrative Services or any successor department.

10
11 G. Director: The Director of Finance and Administrative Services or his or her designee, or any
12 successor.

13
14 H. Economically Distressed Area: A zip code found by the Director to have a high concentration
15 of poverty, unemployment and low-educational attainment, compared to other zip codes.

16
17 I. Journey-level: An individual who has sufficient skills and knowledge of an occupation, either
18 through a formal Apprentice Training Program or through practical on-the-job work experience,
19 to be recognized by a state or federal registration agency and/or an industry as being fully
20 qualified to perform the work of the occupation. Practical experience must be equal to or greater
21 than the term of Apprenticeship.

22
23 J. Labor Hours: Hours performed by workers who receive an hourly wage and are directly
24 employed on the site of a public works contract. "Labor Hours" excludes work by foremen,
25 superintendents and owners.

1 K. Open-Shop Contractor: A Contractor that is not a signatory to a collective bargaining
2 agreement with a union representing the trade(s) of the Contractor's workers, also known as non-
3 union Contractors.

4
5 L. PLA – the acronym for a Project Labor Agreement.

6
7 M. Pre-apprentice: A student enrolled in a construction Pre-apprentice Training Program
8 recognized by the Washington State Apprenticeship and Training Council.

9
10 N. Pre-apprentice Graduate: An individual who completed a Pre-apprentice Training program
11 and has been accepted into an Apprentice Training Program, including those who are still
12 completing their first year of Apprentice training.

13
14 O. Pre-apprentice Training Program: An education-based program, recognized by the State of
15 Washington Apprenticeship and Training Council and endorsed by one or more registered
16 apprenticeship sponsors, with a focus on educating and training students to meet or exceed
17 minimum qualifications for entry into an Apprentice Training Program upon graduation.

18
19 P. Preferred Entry: An agreement provided by a PLA that allows Pre-apprentice Graduates and
20 Helmets to Hardhats veterans priority entry into an Apprentice Training Program ahead of other
21 applicants.

22
23 Q. Priority Worker: Those individuals prioritized for recruitment, training, and employment
24 opportunities because they reside in an Economically Distressed Area.

R. Project Budget: The construction budget for the project that includes all costs estimated to be paid to Contractors, including contingency funds, as estimated at the time of bid or, if absent a bid, at the time of the contract award.

S. Project Labor Agreement (PLA): An agreement executed between the Director and labor unions that represent workers who typically perform on City public works projects.

T. Resident: Those who live in a particular area and can provide evidence to the satisfaction of the Director.

U. Women and Minority Business (WMBE): as used in this Chapter, Women or Minority Business shall have the same meaning given under SMC 20.42, as may be amended from time to time.

Section 4. A new Section 20.37.020 is added to the Municipal Code as follows:

20.37.020 Powers

A. The Director shall implement and administer this Chapter and may develop and adopt rules consistent with the requirements of this Chapter.

B. The Director may reduce or waive requirements or goals when impracticable for a project for one or more of the following reasons: work required due to an emergency, limitations of a sole source, when requirements or goals would be inconsistent with a grant or agreement with a public agency, when inconsistent with federal funding or other funding sources, when the project is in a remote location, or when superseded by other legal requirements.

Section 5. A new Section 20.37.030 is added to the Seattle Municipal Code as follows:

20.37.030 Training Assistance

The Director may assist local Pre-apprentice or Apprentice Training Programs to encourage additional programs, classes and curriculum that may increase graduation, retention and employment rates of Priority Workers. The Director shall establish eligibility criteria for those individuals that may require assistance overcoming barriers to training in, and employment on, City public works projects.

Section 6. A new Section 20.37.040 of the Seattle Municipal Code is added as follows:

20.37.040 Pre-apprentice Training Program Graduates

The Director shall require that one of every five Apprentices employed on a City public works project be Preferred Entry candidates.

Section 7. A new Section 20.37.050 of the Seattle Municipal Code is added as follows:

20.37.050 Priority Hire

A. For projects with a Project Budget at or above \$5 million which are found impracticable under Section 20.37.020, the Director shall establish the percentage of hours to be performed by Priority Workers. Such percentages shall be established separately for Apprentices and for

1 Journey-level workers. Contractors and dispatch under a PLA shall seek to first hire Priority
2 Workers so as to meet or exceed the required percentages.

3
4 B. The Director shall establish the greatest practicable percentages for utilization of Priority
5 Workers using past utilization percentages on similar public works projects from the previous
6 two calendar years, and increasing that percentage by no less than two full percentage points
7 beyond past performance. The Director shall calibrate these goals annually.

8
9 C. The Director shall require Contractors to first seek to employ a Priority Worker who resides in
10 an Economically Distressed Area within Seattle. Should no such worker be available, the second
11 priority shall be workers from Economically Distressed Areas within King County, and then
12 workers from any other Economically Distressed Area as needed to meet priority hire
13 requirements.

14
15 D. The Director shall enforce the requirements in this Chapter and may use actions such as
16 withholding invoice payments or debarment to the extent allowed by contract as authorized by
17 Seattle Municipal Code Chapter 20.70.

18
19 E. Public works bidders shall evidence good faith efforts to achieve aspirational goals for a
20 percentage of Labor Hours performed by women and racial minorities. The Director shall
21 establish the greatest practicable aspirational goals, using the average of past utilization on
22 similar projects in the previous two calendar years and increasing that percentage by no less than
23 two full percentage points beyond past performance. The Director shall calibrate such goals
24 annually.

F. The Director shall establish a committee that includes representatives of labor unions, the City, community advocates, WMBE firms, Contractors, Apprentice and Pre-apprentice Training Programs, and others as appropriate. The Department will convene the committee so the Department may provide updates or seek advice regarding the priority hire program as needed.

Section 8. A new Section 20.37.060 of the Seattle Municipal Code is added as follows:

20.37.060 Project Labor Agreement

A. The Director shall negotiate and execute a Project Labor Agreement that applies to all eligible public works projects with a Project Budget at or above \$5 million, excluding projects deemed impracticable under Section 20.37.020. The PLA may require that all Contractors agree to abide by the terms of the PLA in order to compete and serve on the project.

B. The Director may establish provisions within the PLA that encourage Open-Shop subcontractors to compete and participate in such projects, such as mitigating unique dual-benefit health and pension costs paid by Open-Shop Contractors.

C. The PLA shall permit an Open-Shop Contractor to employ as many as five Core Workers on each project, in a manner compliant to dispatch rules agreed upon within the PLA.

D. No worker shall be required to become a member of a union to be eligible for employment under a PLA with the City of Seattle. No Contractor shall be required to become affiliated with a union to be eligible for work under a PLA with the City of Seattle.

E. The Department may provide technical assistance to WMBE and Open-Shop Contractors in transitioning to a PLA environment.

Section 9. A new Section 20.37.070 is added to the Seattle Municipal Code as follows:

20.37.070 Program Evaluation

A. The Department shall establish benchmarks and metrics to evaluate the program, such as project costs; completion times; workplace safety; utilization rates and graduation rates of Priority Workers, women and racial minorities from Pre-apprentice and Apprentice Training Programs; and changes in the percentage of dollars paid to WMBE Contractors working on projects.

B. The Department shall report findings to the Mayor and City Council annually.

C. The Mayor and City Council will review program results during 2016 to determine if the program should be expanded or amended by increasing or decreasing thresholds.

Section 10. A new Section 20.37.080 is added to the Seattle Municipal Code as follows:

20.37.080 Severability

Any term or provision prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Chapter.

Section 11. Section 20.38.005 of the Seattle Municipal Code, as last amended by Ordinance 120794, is amended as follows:

20.38.005 Apprentice Requirements~~((utilization.))~~

A. On public works contracts with an estimated construction cost of \$1 million~~((One Million Dollars (\$1,000,000)))~~ or more, the Director ~~((is authorized to))~~ shall require that ~~((up to))~~ no less than ~~((fifteen))~~ 15 percent and no more than 20 percent of the contract labor hours be performed by A~~((a))~~ apprentices~~((enrolled in training programs approved or recognized by the Washington State Apprenticeship and Training Council (SAC). Furthermore, it is the City's intent that, on public works projects with an apprentice utilization requirement, there shall be a goal that twenty one (21) percent of the apprentice labor hours be performed by minorities and twenty (20) percent of the apprentice labor hours be performed by women))~~.

B. In determining the percentage for each project, the Director may consider such factors as project size, Labor Hours anticipated for the project, skills required, the likely crafts required for the project, historic utilization rates and Apprentice availability.

C. The Director shall establish aspirational percentage goals for Apprentices that are women and those that are racial minorities using similar factors. Contractors may propose utilization less than aspirational percentage goals when combined with other efforts to meet the intent of building a trained construction workforce.

Section 12. Section 20.38.010 of the Seattle Municipal Code, as last amended by Ordinance 123361, is amended as follows:

20.38.010 Definitions~~((.))~~

~~((When used in this chapter:))~~ The following words and phrases shall have the meanings hereinafter described unless the context in which they are included clearly indicates otherwise:

A. Apprentice: as used in this Chapter, Apprentice shall have the same meaning as defined by SMC 20.37.010, as may be amended from time to time.

B. "Apprentice ~~((f))~~Labor ~~((h))~~Hours" means the total hours required to be worked by ~~((a))~~Apprentices on a public works project.

C. "Director" means the Director of Finance and Administrative Services or his or her designee, or any successor.

D. "Labor ~~((h))~~Hours" means~~((the total))~~ hours performed by~~((of))~~ workers who receive~~((ing))~~ an hourly wage and~~((who))~~ are directly employed on the site of ~~((the))~~a public works project.~~(("Labor hours" shall include hours performed by workers employed by the contractor and all subcontractors working on the project.))~~ "Labor ~~((h))~~Hours" shall exclude hours worked by foremen, superintendents, owners and workers who are not subject to prevailing wage requirements.

Section 13. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of its application to any person or circumstance, shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 14. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2014, and signed by me in open session in authentication of its passage this ____ day of _____, 2014.

President _____ of the City Council

Approved by me this ____ day of _____, 2014.

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

Monica Martinez Simmons, City Clerk

(Seal)